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CHARLES EDWARD VICTOR

v.

MALAYAN BANKING BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN YUNUS J
[CIVIL SUIT NO: S3(S7)-22-883-2000]
22 JANUARY 2008

C ***CONTRACT:*** *Breach - Action for damages - Dishonour of plaintiff's cheques and closing of plaintiff's account by defendant bank - Whether there was breach - Whether actual loss proved*

TORT: *Defamation - Libel - Dishonour of cheques - Whether*
D *defamatory of bank to have stamped words "Post Dated" instead of "Refer to Drawer" on plaintiff's cheques - Whether defendant bank's blunders caused plaintiff to suffer public humiliation - Damages*

BANKING: *Banker and customer - Dishonour of cheques - Breach of contract - Defamation - Damages*

E

The plaintiff in this action, a trader, sued the defendant bank for breach of contract and defamation. He was a customer of the defendant since 1982, operating a current account with it. On 5 June 2000, the plaintiff issued a cheque that was post-dated to
F 7 July 2000 for RM180 in favour of one Cheong Trading. This cheque was prematurely presented by Cheong Trading to the defendant for payment on 7 June 2000 and was returned by the defendant with the remark "Refer to Drawer" incorrectly stamped on the cheque. The defendant then proceeded to wrongly debit
G the plaintiff's account with the sum of RM100 instead of the correct penalty amount of RM10 for post-dated cheques. Due to the wrongful debiting, the plaintiff's account was wrongly recorded as being overdrawn by RM82.78. The plaintiff was at the material time also an insurance agent of an insurance company, one AIA
H Co Ltd. On 7 June 2006, he issued a cheque in favour of AIA Co Ltd for RM227.90 and, on 12 June 2000, he deposited RM250 to ensure that there would be sufficient funds to honour this cheque. However, the RM250 was unfortunately utilised by the defendant to set off the "overdrawn" balance and this left the
I plaintiff's account with only RM167.22, which was insufficient to honour the plaintiff's cheque for RM227.90 in favour of AIA Co Ltd. On 13 June 2000, that cheque was also returned by the

defendant with the words "Refer to Drawer" and the plaintiff's account was again debited with RM100. Following this, the defendant proceeded to issue a notice dated 17 June 2000 to the plaintiff to close his account. As a result of the plaintiff's two cheques being wrongly dishonoured by the defendant, the plaintiff was blacklisted in the records with Bank Negara Malaysia and barred from operating a current account with any bank in Malaysia. The plaintiff's current account with another bank, Public Bank Bhd, was also closed due to this blacklisting. The defendant, through its solicitor's letter dated 15 September 2000, admitted its mistake.

Held (for the plaintiff):

(1) It was clear that the defendant had breached its contract with the plaintiff when it failed to honour the plaintiff's two cheques and when it closed the plaintiff's account. However, damages amounting to RM300,000 as prayed for by the plaintiff was not awarded because, on the evidence, the plaintiff had not succeeded in proving actual loss of RM300,000 by reason of the breach of contract. (para 12)

(2) It was defamatory for the bank to stamp the words "Refer to Drawer" in rejecting the two cheques of the plaintiff. In rejecting the first cheque, the words that should have been stamped at the back of the cheque should have been "Post Dated" instead of "Refer to Drawer". The second cheque should not have been rejected by the defendant at all as the plaintiff actually had sufficient funds in his account. It was true that his account showed that he had insufficient funds – but that was not what the situation should have been; there was insufficient funds simply because of the bank's blunders in dealing with the plaintiff's account. The first blunder was in debiting RM100 from the plaintiff's account and the second was to deduct RM82.78 from the RM250 deposited by the plaintiff into his account. The wrongful and unjustified "Refer to Drawer" remark on both his cheques must have caused embarrassment to the plaintiff and lowered his standing in the eyes of Cheong Trading and AIA Co Ltd. In the circumstances of the present case, an award of RM250,000 to the plaintiff as damages for defamation was justified. It was not just the embarrassment suffered when dealing with Cheong Trading and AIA Co Ltd. The defendant's acts resulted in the closing

of the plaintiff's account with the defendant and also with Public Bank Bhd, and the blacklisting by Bank Negara Malaysia. Practically everyone in modern day society needs to have a bank account – all the more so if the person is a trader like the plaintiff. He had suffered public humiliation due to the defendant's blunders. (paras 13, 14 & 16)

[Order accordingly.]

Legislation referred to:
Rules of the High Court 1980, O. 78 rr. 2, 3(1)

Other source(s) referred to:
Paget's Law of Banking, 11th edn, pp 337-338

For the plaintiff - Suria Kumar; M/s Suria Kumar & Co
For the defendant - Ravindra Kumar; M/s Gulam & Wong

Reported by Suresh Nathan

JUDGMENT

Hishamudin Yunus J:

[1] In this action the plaintiff is suing the defendant for breach of contract and for defamation.

[2] The plaintiff is a trader. He carries on his business under the name and style of 'Cevic Enterprise'. He was a customer of the defendant bank and operated a current account No: 014075-109459 with the defendant bank. He had been a customer of the bank since 1982.

[3] On 5 June 2000 the plaintiff issued a cheque which was post-dated to 7 July 2000 for RM180 in favour of one Cheong Trading. This cheque was prematurely presented by Cheong Trading to the defendant for payment on 7 June 2000. This cheque was returned by the defendant with the remark:

Refer to drawer

incorrectly stamped on the cheque. The defendant should have instead stamped the words:

post dated cheque

[4] The defendant then proceeded to wrongly debit the plaintiff's account with the sum of RM100 instead of the correct penalty amount for post-dated cheques which is only RM10.

[5] It was unfortunate for the plaintiff: one mistake (by the bank) led to another. Due to the wrongful debiting of RM100 by the defendant, the plaintiff's account was wrongly recorded as being overdrawn by RM82.78.

[6] The plaintiff at the material time was also an insurance agent of an insurance company – AIA Co Ltd. On 7 June 2006 the plaintiff issued a cheque No. 641036 in favour of AIA Co Ltd for RM227.90. On 12 June 2000 the plaintiff deposited cash in the sum of RM250 to ensure that there would be sufficient fund to honour this cheque No. 641036.

[7] However, the cash of RM250 deposited by the plaintiff to honour payment of his cheque No. 641036 to AIA Co Ltd was unfortunately utilized by the defendant bank to set off the 'overdrawn' balance and the plaintiff's account was left with only RM167.22. The balance of RM167.22 in the plaintiff's account was insufficient to honour the plaintiff's cheque No: 64136 for RM227.90 in favour of AIA Co Ltd.

[8] On 13 June 2000 the plaintiff's cheque No: 641036 was also returned by the defendant with the words 'Refer to Drawer' and the plaintiff's account was again debited with RM100. Following this, the defendant bank proceeded to issue a notice dated 17 June 2000 to the plaintiff to close his account pursuant to the Biro Maklumat Cek guidelines.

[9] As a result of the plaintiff's cheques No: 641037 and 641036 being dishonoured wrongly by the defendant bank, the plaintiff was blacklisted in the records with Bank Negara Malaysia and was barred from operating a current account with any bank in Malaysia. The plaintiff's current account with another bank, that is, Public Bank Berhad was also closed due to this blacklisting.

[10] The defendant have admitted their mistakes through their solicitors' letter dated 15 September 2000.

[11] At the conclusion of the trial, and after considering written submissions of both sides, I was satisfied that the defendant:

A (a) had committed a breach of contract; and

(b) had defamed the plaintiff.

Breach of contract

B **[12]** In my judgment, on the law it is clear that Malayan Banking had breached its contract with the plaintiff when it failed to honour the two cheques of the plaintiff and when it closed the plaintiff's account. However, I did not award plaintiff the damages of RM300,000 as prayed for because on the evidence I am not C satisfied that the plaintiff had succeeded in proving actual loss of RM300,000 by reason of the breach of contract.

Defamation

D **[13]** In my judgment, it is defamatory for the bank to stamp the words:

Refer to Drawer

in rejecting the two cheques of the plaintiff. With regard to the E first cheque, in rejecting this cheque, the words that should have been stamped at the back of the cheque should have been 'post dated' instead of 'refer to drawer'. With regard to the second cheque, this cheque should not have been rejected by the defendant at all. The plaintiff actually had sufficient funds in his F account. It is true that his account showed that he had insufficient funds – but that was not what the situation should have been: there was insufficient funds simply because of the bank's blunders. The bank had made blunders in dealing with the plaintiff's account. The first blunder was in debiting RM100 from G the plaintiff's account. The second blunder was to deduct RM82.78 from the RM250 cash deposited by the plaintiff into his account.

[14] The wrongful and unjustified 'Refer to Drawer' remark on H both his cheques must have caused embarrassment to the plaintiff and had lowered his standing in the eyes of Cheong Trading and AIA Co Ltd.

[15] In *Paget's Law of Banking*, 11th edn. at pp. 337-338 the learned author says:

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> Libel is a tort, the making of a defamatory statement in writing or printing which without justification disparages a man's reputation to a third party. When a cheque is dishonoured it is usual for the drawee bank to put a note on it indicating the reason for the dishonour.
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> …
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> In *Sim v. Stretch* [1936] 2 All ER 1237, HL, Lord Atkin said that if the words used to lower the plaintiff in the estimation of right thinking people generally, they are defamatory. What are right thinking people may not readily be defined, but it may be said that the common answer where a bank decides to dishonour a cheque conveys in many people's mind that he has no money in his account to meet it, or that he did not draw in good faith or that he drew recklessly or in fraud.
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> …
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> The answer commonly given, in the absence of circumstances requiring a different one, is 'Refer to Drawer', sometimes abbreviated to 'R/D'. At one time this was not regarded as capable of a defamatory meaning, as witness the statement of Scrutton J in *Flach v. London and South-Western Bank Ltd.* [1915] 31 TLR 334 that it was not possible to extract a libelous meaning from what the bank said. This view was adopted by Du Parc J in *Plunkett v Barclays Bank Ltd* [1936] 2 KB 107. Today, it is generally accepted that the term is capable of a defamatory meaning.

[16] In the present case, I awarded the plaintiff RM250,000 as damages for defamation. I am of the view this award is justified in the circumstances. It is not just the embarrassment suffered when dealing with Cheong Trading and AIA Co Ltd alone. The acts of the defendant resulted in the closing of his account with the defendant bank and also with Public Bank Berhad, and the blacklisting by Bank Negara Malaysia. Practically everyone in modern day society needs to have a bank account – all the more so if the person is a trader – like the plaintiff. He had suffered public humiliation due to the defendant's blunders.

[17] The learned counsel for the defendant submits that the plaintiff did not plead the commission of the tort of libel by the plaintiff in the plaintiff's statement of claim. The defendant further points out that O. 78 rr. 2 and 3(1) of the Rules of the High

A Court 1980 has not been complied with in the drafting of the statement of claim. I have closely examined the statement of claim. Clearly there is no merit in this technical argument raised by the defence. This argument should not have been raised at all.

B [Award of RM250,000 in damages to the plaintiff; with costs.]

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APPEAL UPDATES

The Court of Appeal having heard the appeal in respect of Kuala Lumpur High Court Civil Suit No. S3[S7]-22-883-2000 has partially allowed the appeal in the following terms:

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(i) Award on quantum reduced from RM250,000 to RM75,000

(ii) Cost in the sum of RM5,000 awarded to appellant

(iii) Decision of High Court apart from quantum affirmed; and

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(iv) Deposit to appellant towards account of cost.

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